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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Part 90 of the)
Commission's Rules to Expand) PR Docket No. 92-209
Coordination of the 800 MHz)
General Category Channels)

To: The Commission

REPLY COMMENTS
OF
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.

The National Association of Business and Educational Radio, Inc. ("NABER"), pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. Section 1.415, hereby respectfully submits its Reply Comments in response to the Comments filed by various parties in the above-captioned proceeding.

I. BACKGROUND

A. NABER Comments

In its initial Comments, NABER conditionally supported the Commission's proposal to permit applicants for conventional Specialized Mobile Radio ("SMR") systems requesting General Category channels to obtain frequency coordination from any one of the three recognized frequency coordinating committees. NABER contended that the Commission must resolve the explicit direction of Congress to recognize only representative frequency advisory committees before permitting non-representative committees to issue frequency coordinations. In the event that the Commission is able to reconcile the Congressional direction with its proposal in this

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rule making, NABER argued that the Commission must extend the coordination options to all applicants proposing a conventional system to be operated on General Category channels.

B. Comments Of Other Parties

Three of the other four parties who commented in this proceeding¹ supported the proposal to expand the coordination of applications for conventional SMR stations. APCO took no position, and disclaimed any interest in the coordination of any applications for non-public safety entities. AMTA, in addition to supporting the proposal, urged the Commission to implement a cross-coordination procedure for General Category channels similar to the interservice coordination procedures for applicants in the Public Safety, Business and Industrial/Land Transportation Radio Services seeking out-of-category channels. Additionally, Fleet Call, Inc. filed Reply Comments on December 10, 1992, in which it supported the Commission's proposal.²

II. REPLY COMMENTS

A. Cross-Coordination Procedures

NABER strongly favors the Commission's consideration and action on AMTA's proposal to implement cross-coordination procedures for the General Category channels. NABER concurs with

¹ Association Public-Safety Communications Officers, Inc. ("APCO"), American Mobile Telephone Association, Inc. ("AMTA"), Industrial Telecommunications Association, Inc. ("ITA"), and Council of Independent Communication Suppliers ("CICS"), an ITA affiliate.

² Fleet Call stated that NABER's request that the Commission expand coordination options for all conventional applicants was beyond the scope of the proceeding.

AMTA's conclusion that the Commission's proposal to expand coordination option for conventional SMR applications does not resolve the underlying problem with coordination of General Category channels. The notification procedures that the Commission has permitted to become standard practice for coordination of General Category channels has created an adverse perception of the frequency coordination process and has been costly to the applicant in the terms of both time and money.

Prior to the General Category channels being made available for trunking,³ NABER, ITA and APCO were cross-coordinating applications before the applications were filed with the Commission. Each coordinating committee exchanged photocopies of the FCC Form 574 applications after the frequency recommendation was made, but prior to filing the application with the Commission. In those cases where applications recommending the same frequency pair crossed in the mail, the two coordinators would determine which application had been filed first with the respective coordinator's office. Generally, the coordinators were able to arrive at an amicable solution. This procedure worked well and was beneficial to the applicants.

The Commission, in its General Category Report and Order, stated that "[p]rocedures are already in place for cross-notification among the three 800 MHz coordinators [for the 800 MHz

³ See Report and Order (FCC 90-234), PR Docket No. 87-213, 5 FCC Rcd 4016 (1990) ("General Category Report and Order").

conventional channels] when a recommendation is made by one."⁴ Based on the Commission's use of "notification" as opposed to "coordination," ITA unilaterally modified the cross-coordination procedure previously used among the three coordinators. Once the coordination of an application seeking General Category channels was complete and certification made, ITA forwarded the application to the Commission and sent a copy of the application to NABER and APCO as notification of the action. Although NABER and APCO both sought the Commission's assistance to re-establish the prior procedures, the Commission declined to rule on the matter. Accordingly, NABER and APCO also began the "notification" procedure.

The implementation of the notification procedure has created a "race to the courthouse door" mentality, and caused confusion and hardship on applicants seeking to operate private land mobile radio systems on General Category channels. The current procedures, apparently sanctioned by the Commission, are detrimental to the applicants of General Category channels. An application may be certified by NABER, forwarded to the Commission, and assigned a file number, and then returned or dismissed by the Commission because an application certified for the same frequency by another coordinator was filed one or two days prior to the NABER-certified application, but NABER at the time of certification was not apprised of the fact. The application must then be submitted for recertification -- causing delay in the grant of the

⁴ Id. at para. 57.

authorization for the applicant. In some cases, due to the delay, a frequency recommendation is no longer available.

Regardless of the expansion of coordination options by an applicant, without re-establishment of the cross-coordination procedures, the applicant will not receive the quality service to which it is entitled. Accordingly, NABER strongly urges the Commission to require a cross-coordination procedure for General Category channels as previously conducted prior to the adoption of the General Category Report and Order.

B. NABER's Proposal Is Not Beyond the Scope of This Proceeding

Fleet Call supports the Commission's initial conclusion that there are no practical nor public interest reasons for limiting applicants for conventional SMR systems to one frequency coordinator. However, NABER argues that Congressional direction and prior Commission decisions prohibit the expansion of coordination options for conventional SMR applicants unless the Commission specifically determines that in the 800 MHz General Category representativeness is no longer a factor for certification of frequency coordinators. Should the Commission reach this conclusion, the Commission must then permit all conventional applicants to have the expanded coordination options.

Congress expressly directed the Commission to recognize only representative frequency advisory committees before permitting non-representative committees to issue frequency coordinations.⁵ The Commission, in its selection of frequency coordination committees, placed specific emphasis on representativeness because of its

⁵ See Communications Technical Amendments Act of 1982, Report 97-751, 97th Congress 2d Sess., § 20, p.47.

decision to certify one coordinator per service.⁶ Although the Commission certified three frequency coordination committees for the 800 MHz conventional frequency category, the Commission still required the applicant to apply through the coordinator representing the category in which it established eligibility.⁷ In accordance with its decision, the Commission certified NABER to coordinate all applications for business use of the 800 MHz conventional category channels, including conventional SMR use.⁸ The Commission affirmed its decision to recognize NABER as the certified frequency coordinator in the adoption of rules to permit the 800 MHz conventional channels to be operated in a trunked mode.⁹ NABER contends that unless the Commission expressly states its reasons for its reversal regarding the representativeness of frequency coordinators, the adoption of the proposed rule in this proceeding would be arbitrary and capricious.

Accordingly, NABER asserts that the Commission must resolve the conflict between its earlier decisions and its initial conclusion in this proceeding to permit applicants for conventional SMR systems to have their applications coordinated by a non-representative frequency coordinator. Further, NABER contends that should the Commission be able to resolve this conflict, the logical

⁶ Report and Order (FCC 86-143), Frequency Coordination in the Private Land Mobile Radio Services, PR Docket No. 83-737, 103 FCC 2d 1093, para. 70 and fn. 17.

⁷ Id. at para. 108.

⁸ Id.

⁹ See Report and Order (FCC 90-234), Trunking in the Private Land Mobile Radio Services for More Effective and Efficient Use of the Spectrum, PR Docket No. 87-213, 5 FCC Rcd 4016, fn. 75 (1990).

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extension of its reversal in policy in regard to the coordination of General Category channels for conventional use is to permit all applications, regardless of eligibility, to select one of the three certified 800 MHz frequency coordinators.

The issues set forth above are not beyond the scope of the proceeding. The Commission is not limited to taking only the action proposed in the original Notice, but may consider and adopt counterproposals and proposals if within the general purview of its published notice.¹⁰ The docket is entitled "Amendment to Part 90 to Expand Coordination of 800 MHz General Category channels." Expanding the coordination options necessarily requires the Commission to address its prior decision regarding the representativeness of the coordinator inasmuch as the Commission may be reversing its prior precedent. NABER is confident that the Commission after consideration will agree that a reversal of the prior precedent results in treating all conventional applicants similarly, and that the Commission must expand coordination options for all applicants proposing conventional systems and seeking use of General Category channels. Accordingly, the Commission's adopting final rules that expand coordination options for all applicants is well within its authority.

¹⁰ See Memorandum Opinion and Order ((FCC 79-235), Docket No. 21135, para. 7, adopted April 17, 1979. ("Adequate notice is given when the Commission clearly puts interested persons on notice of the general subject matter to be considered."))

III. CONCLUSION

WHEREFORE, the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

**National Association of Business
and Educational Radio, Inc.**

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